

2 ARTICLE APPEARED
ON PAGE A-21

NEW YORK TIMES
29 October 1984

A Reporter's Notebook: The Jargon of CBS Trial

By M. A. FARBER

Like the Vietnam War itself, the battle now being waged in Federal Court between Gen. William C. Westmoreland and CBS rises and falls with each day of testimony. And, each day, it winds through verbal jungles as dense as the lairs in which the Viet Cong took refuge 10 to 20 years ago — terms such as DISUMs and WIEUs, PERINTREPs and SNIEs.

General Westmoreland, who commanded American troops in Vietnam between 1964 and 1968, contends that CBS libeled him in a 1982 documentary, "The Uncounted Enemy: A Vietnam Deception." CBS says the broadcast was true. But, no matter who is right, the witnesses in this much-publicized, \$120 million suit are leading the jury through a maze of intelligence arcana.

The other day, Robert W. Komer, President Johnson's special ambassador in Saigon in 1967 and 1968, was on the stand recalling a discussion he had had about enemy strength with George A. Carver, the chief of Vietnamese affairs for the Central Intelligence Agency.

Mr. Carver, he said, told me that "the SNIE had run into a snag."

The jury, the lawyers, the plaintiff and defendants all burst into laughter. The old SNIE — the SNIE about which everyone was talking so earnestly and so passionately — was having a problem.

A SNIE was a Special National Intelligence Estimate, a description for the President of the enemy's capabilities. In 1967, senior military officers and the C.I.A. fought bitterly over the size and nature of the forces to be included in the SNIE that year, with the C.I.A. favoring higher figures. Now, for this trial, the fight is being restaged. A DISUM was a Daily Intelligence Summary, put together each morning for General Westmoreland. A WIEU was a Weekly Intelligence Estimate Update. A PERINTREP was a Periodic Intelligence Report.

All of these esoteric terms, and more, fly like bullets through the high-ceilinged, third-floor courtroom on Foley Square where the trial has gone into its fourth week today.

Now and again, Judge Pierre N. Leval hauls out a large, criss-crossed board he calls his "X-chart" and explains to the jury that a piece of evidence being introduced can be considered for both truth and "state of mind," or for one but not the other.

On those occasions, the jurors tend to lean forward in their seats, but whether they have absorbed this distinction is unknown.

Judge Leval's explanations — "I feel like a law professor," he said — underscore the complicated nature of the problems the jury faces in dealing with a libel suit in which virtually nothing of consequence has been conceded by either side.

To prevail in his suit, General Westmoreland must prove that the documentary's accusations that he sought to deceive President Johnson and the Joint Chiefs of Staff about enemy strength in Vietnam in 1967 were false — and that CBS knew they were false or acted with "reckless disregard" for whether they were true or false.

For the jury, that means deciding not only the truth of what took place in Saigon and Washington in 1967 — including General Westmoreland's "state of mind" — but also the "state of mind" of CBS and certain of its employees in 1982.

For example, when David Boies, CBS's lawyer, referred to the findings of a 1976 Congressional report used for the documentary, Judge Leval cautioned the jury to consider the report, not for its accuracy about the war, but only in connection with CBS's "state of mind" in 1982.

When a 1967 cable from Saigon to Washington was offered as evidence, the judge initially ruled that it could not be used on the issue of CBS's state of mind because the network didn't know of its existence during the preparation of the broadcast. He had to reverse himself minutes later, when Mr. Boies acknowledged that the network had access to the document after all.

Though it is cited most often as the defendant, CBS is not alone in that category. And the other defendants, not being corporations, attract the greater attention in the courtroom.

They are Mike Wallace, the broadcast's narrator; George Crile, its producer, and Samuel A. Adams, a former C.I.A. analyst who took part in

the deliberations over the SNIE in 1967 and who has said ever since that General Westmoreland's command reduced the figures on enemy strength to make it appear that America was winning the war. Mr. Adams's research for a book on the subject — his hundreds of pages of "chronologies" — was used in the preparation of the documentary, on which he appeared.

At the defense table, Mr. Adams writes on large yellow legal pads with the same ardor with which he once compiled his "chronologies." A descendant of President John Adams, Mr. Adams graduated in history from Harvard in 1955 and spent two years at the university's law school and three years as a naval officer before joining the C.I.A. in 1963 as an analyst on Congolese affairs.

Next to him sits Mr. Crile, who watches expressionlessly — hand on cheek, fingers massaging his earlobe — the replaying of "outtakes" that are seldom seen outside a network's studio. To Mr. Crile's right sits Mr. Wallace, who has missed a few days of court to fulfill his obligations as a correspondent for "60 Minutes."

In front of the defendants sits General Westmoreland, his head cocked back, accenting the jutting jaw that was once an easy target for political cartoonists. The general doesn't talk now to Mr. Wallace and, when he passes the defense table, he quickens his pace. But there was a time when General Westmoreland felt differently about Mr. Wallace.

At the start of the trial, Mr. Wallace showed reporters a passage from his recent book, "Close Encounters," citing a letter the general had sent him after a "60 Minutes" story on wounded veterans.

"I just want to tell you it was a first class piece of reporting," General Westmoreland had written in March 1972. "I have never seen better."

If there were no other way to tell the general's lawyer from the network's — both are men of medium physical stature who often seem professorial in their questioning — one could look to see which smiles. Only Mr. Boies, an urbane litigator who has become increasingly aggressive and pointed in his cross-examination for CBS, smiles with any regularity. Dan M. Burt, General Westmoreland's lawyer, is as tense as a tight wire. Each lawyer has 150 hours to present his case, and Judge Leval, with a watch resting on his bench, is keeping time.

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Both lawyers are solicitous of the jury and the witnesses — Mr. Boies once lapsed into calling Walt W. Rostow, a former Presidential assistant, “Your Honor” and Mr. Rostow replied: “Yes, your excellency.” But, while Mr. Burt is calling “friendly” witnesses on direct testimony, virtually certain of their answers, Mr. Boies, on cross-examination, has the burden of eliciting contrary testimony without appearing hostile.

Mr. Burt is fond of referring to the five segments — separated by advertising — of the 90-minute CBS documentary as five “acts,” as if they were theater rather than fact. But the lawyer’s frequent complaint before the trial that his Capital Legal Foundation lacked the resources to compete with Mr. Boies’s elite corporate firm of Cravath, Swaine & Moore now seems dated.

A few feet from Mr. Burt, in a green leather armchair against a wall of the courtroom, sits an unobtrusive figure with a pad on his lap and an eye on the witness. He is George S. Leisure Jr., a senior partner of one of the nation’s leading law firms — Donovan Leisure Newton & Irvine. Mr. Leisure, an experienced litigator, is there to advise Mr. Burt, an international tax specialist who has never tried a case before a jury. And since August, he has provided office space at his firm for Mr. Burt, and the full-time assistance of two law associates.

“I wouldn’t take the case away from Dan under any circumstances,” Mr. Leisure said the other day. “But if he didn’t listen to me, I’d go back to doing something else.”